

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA,

Plaintiff,

Vs.

BRIAN LEE KRZECZOWSKI,

Defendant.

Case No. 1:14-CR-109

Chattanooga, Tennessee

CHANGE OF PLEA HEARING

TAKEN ON DECEMBER 23, 2014

BEFORE THE HONORABLE BILL CARTER

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANT:

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P R O C E E D I N G S

THE COURT: Please call the case.

THE CLERK: Case number 1:14-CR-109, USA
versus Krzeczowski.

THE COURT: Counsel, please make
appearances for the record, the government
first.

MR. BROOKS: James Brooks on behalf of
United States.

MR. BERGMANN: Paul Bergmann on behalf of
Brian Krzeczowski, Your Honor.

THE COURT: Thank you very much.

MR. BROOKS: Your Honor, before we start,
there is, in the factual basis, I want to
add a technical aspect of it to make sure
the elements are met.

THE COURT: This is in the plea agreement,
Document 14?

MR. BROOKS: Yes, Your Honor.

THE COURT: And the factual basis is
contained in Paragraph 4 on Pages 2, 3,
and -- 2 and 3.

MR. BROOKS: Yes, sir, and I'll do this
however the Court would prefer, but
basically the images themselves need -- we

1 need to state that the images were across
2 state lines or that the defendant used a
3 device that had parts within it that had
4 been manufactured outside the state of
5 Tennessee.

6 THE COURT: Used a what?

7 MR. BROOKS: A device, it could be a
8 computer.

9 THE COURT: All right.

10 MR. BROOKS: That the items inside the
11 computer had been manufactured outside the
12 state of Tennessee, and I'm sure we can do
13 that and I'd like to amend it to that
14 effect. We filed it as an amended plea
15 agreement. It doesn't really -- it doesn't
16 change it substantially in any way. I think
17 the defendant admits both those things are
18 true. Gmail, which is the account he used
19 to send the pictures, has servers that are
20 outside the state of Tennessee, so the
21 images would have necessarily traveled
22 outside of Tennessee and the computer that
23 he used as well as the victim would have had
24 parts manufactured outside of Tennessee. I
25 have the agent coming, and I just talked to

1 him on the phone, and he confirms that
2 Gmail's servers are outside of Tennessee,
3 the images clearly did. I want to ask him
4 just for safety's sake about the parts of
5 the computer and then I want to add those to
6 the factual basis, file it amended in that
7 regard. Otherwise, the plea agreement is --

8 THE COURT: And the reason for that is one
9 of the elements of such an offense is that
10 there be some connection with interstate
11 commerce?

12 MR. BROOKS: Yes, Your Honor.

13 THE COURT: And as is stated in Paragraph
14 3, ends with this language. At his request,
15 those images were sent via the internet. It
16 does not say from outside of the state of
17 Tennessee, but I guess you're saying that
18 that would have been outside of the state of
19 Tennessee.

20 MR. BROOKS: It would have, and that may
21 be satisfactory to say via the internet.
22 I'm just not 100 percent sure, and I would
23 like to amend that to add that particular
24 language.

25 THE COURT: All right. Well, I guess I'll

1 ask defense counsel. Is there any objection
2 to that amendment? Basically that's just --
3 I guess you're saying making a fuller
4 statement that it involved interstate
5 commerce because it says the internet, but
6 it does not specifically state that it
7 involved interstate commerce.

8 MR. BERGMANN: Your Honor, I talked to Mr.
9 Krzeczowski about that, and we discussed
10 this issue. I did some research on it. I
11 think the government is correct on that, so
12 we have no objections.

13 THE COURT: The request is made that this
14 be amended. I will allow that amendment. I
15 will accept this as an oral amendment. If
16 you will review the proposed language with
17 defense counsel, and if it's satisfactory,
18 then file the amended factual basis
19 contained in the amended plea agreement.

20 MR. BROOKS: Yes, Your Honor, I will.

21 THE COURT: That's fine.

22 MR. BROOKS: Thank you.

23 THE COURT: All right. Well, now having
24 said that preliminarily, we'll go back to
25 the beginning. Mr. Krzeczowski, it's my

1 understanding that you're wanting to
2 withdraw your not guilty plea and enter a
3 guilty plea pursuant to this plea agreement.
4 I need to explain some things to you before
5 we get started. My name is Bill Carter, I'm
6 the assigned United States Magistrate judge
7 in this case. Judge Mattice is the U.S.
8 District Judge, and you actually have a
9 right to have your guilty plea before a U.S.
10 District Judge, but Judge Mattice has asked
11 me to conduct this hearing for him, and I
12 can do that with your consent.

13 There's a procedure that's followed that
14 I'll explain to you. I'm going to be asking
15 you a series of questions. The questions I
16 ask are the same questions the District
17 Judge would ask if he were conducting the
18 hearing, and the purpose for my asking the
19 questions is to make an assessment and a
20 recommendation to Judge Mattice. I have to
21 assess whether you're competent to enter a
22 plea here today. I have to assess whether
23 it's what's known as a knowing and
24 understanding plea, that is you know and
25 understand the constitutional rights that

1 you'll give up by pleading guilty, and I'll
2 explain those to you during the hearing. I
3 also have to assess whether anyone has
4 forced you or made you enter this guilty
5 plea.

6 Now, after you answer my questions, if I
7 conclude that you and your lawyer have
8 discussed your right to have a jury trial,
9 you've also discussed the possible benefits
10 that might flow from entering a guilty plea
11 pursuant to this plea agreement as modified,
12 and I conclude that no one has made you do
13 this, but that you have waived your right to
14 a jury trial and this plea agreement, and
15 decided between those alternatives, this is
16 the way you want to handle your case, then I
17 prepare a document that I send -- that I
18 file called a report and recommendation that
19 will basically recommend Judge Mattice
20 accept your guilty plea. The actual
21 acceptance of the plea will be by Judge
22 Mattice and not by me, and you actually have
23 a right to object to that report and
24 recommendation for a period of 14 days. So
25 procedurally, that's what's going to happen

1 here today.

2 Now, in a moment, I'm going to be handing
3 you what's called a consent form. By
4 signing this form, you're essentially
5 agreeing to allow me to conduct the hearing
6 for Judge Mattice, that's the meaning of it.
7 This form tells you that I've advised you
8 what it is you're pleading guilty to and the
9 range of punishment as well, and I'm going
10 to ask Mr. Brooks to advise you of that if
11 you would, Mr. Brooks, the range of
12 punishment what it is he's pleading guilty
13 to, and this is -- I don't know if this was
14 a multiple count indictment originally.

15 MR. BROOKS: It was, and he's pleading to
16 Count Number 1; the other counts will be
17 dismissed at the time of sentencing. Count
18 Number 1 charges him with the production of
19 child pornography in violation of 18 USC
20 2251 subsection A, and it carries a
21 mandatory minimum sentence of 15 years with
22 a maximum possible sentence of up to 30
23 years, supervised release up to life, a fine
24 of up to \$250,000, any lawful restitution,
25 and a \$100 special assessment fee.

1 THE COURT: Thank you. Those are the
2 ranges of punishment and here is the consent
3 form.

4 MR. BERGMANN: One moment, Judge, please.

5 THE COURT: All right. I've received the
6 executed consent form executed here in open
7 court. I'll make that a part of the record
8 in the case. I'm going to need to have you
9 sworn in, Mr. Krzeczowski. If you would
10 stand where you are and just remain standing
11 there and raise your right hand, my deputy
12 clerk will swear you in.

13 BRIAN LEE KRZECZOWSKI,
14 having been first duly sworn on oath, was examined and
15 testifies as follows, to-wit:

16 THE COURT: Mr. Krzeczowski, do you
17 understand now that you're under oath, if
18 you were to tell me things that are not
19 true, you could be prosecuted for perjury.
20 Do you understand that?

21 MR. KRZECZOWSKI: Yes, Your Honor.

22 THE COURT: What's your full name?

23 MR. KRZECZOWSKI: Brian Lee Krzeczowski.

24 THE COURT: How old are you, sir?

25 MR. KRZECZOWSKI: I'm 41.

1 THE COURT: How much education do you
2 have?

3 MR. KRZECZOWSKI: I got a high school
4 G.E.D.

5 THE COURT: All right, sir. In the past,
6 have you ever been treated for any type of
7 mental illness?

8 MR. KRZECZOWSKI: No, sir.

9 THE COURT: In the past, have you ever
10 been treated for addiction to narcotic drugs
11 of any kind?

12 MR. KRZECZOWSKI: No, sir.

13 THE COURT: Are you presently under the
14 influence of any drug or narcotic or
15 alcoholic beverage, anything that would
16 cause you to not be able to understand?

17 MR. KRZECZOWSKI: No, sir.

18 THE COURT: Mr. Bergmann, do you consider
19 your client competent to enter a plea here
20 today?

21 MR. BERGMANN: Yes, Your Honor, I do.

22 THE COURT: All right, sir. Now, Mr.
23 Krzeczowski, have you gone over the
24 indictment, particularly the first count
25 which you're entering your guilty plea with

1 your lawyer and discussed that?

2 MR. KRZECZOWSKI: Yes I have.

3 THE COURT: Have you had enough time to
4 talk to your lawyer about your case?

5 MR. KRZECZOWSKI: Yes, I have.

6 THE COURT: Are you satisfied with his
7 representation of you in the case?

8 MR. KRZECZOWSKI: Yes, I am.

9 THE COURT: Your decision to plead guilty
10 here today, I take it that you-all have both
11 discussed this, you and Mr. Bergmann, the
12 right to have a jury decide the case, you no
13 doubt also discussed the possible benefits
14 that might flow from entering this plea
15 agreement and entering a plea pursuant to
16 the plea agreement, and I take it that
17 between those alternatives, you've weighed
18 those two options and decided not to have a
19 jury trial, but to enter this guilty plea
20 pursuant to this plea agreement. Is that
21 your decision here today?

22 MR. KRZECZOWSKI: Yes, Your Honor.

23 THE COURT: All right, sir. I'm going to
24 go over the constitutional rights that
25 you're going to give up by pleading guilty.

1 Any time anyone pleads guilty, they give up
2 a series of constitutional rights. I go
3 over them this three groups of three.

4 First, you have a right to plead not guilty
5 and persist in a not guilty plea. Second,
6 have a jury try your case. Third, during
7 that trial, the constitution guarantees you
8 something called the presumption of
9 innocence. That presumption of innocence
10 stays with you until and unless the
11 government presents enough evidence to a
12 jury to convince them beyond a reasonable
13 doubt that you're guilty.

14 If you plead guilty here today, those are
15 rights you'll give up. You'll give up the
16 right to persist in a not guilty plea
17 because in a moment you'll be telling me
18 that you are guilty, there will not be a
19 jury trial, and you'll no longer be presumed
20 innocent because in a moment, you'll be
21 telling me that you're guilty. You
22 understand those are rights that you'll give
23 up if you plead guilty here today?

24 MR. KRZECZOWSKI: Yes, Your Honor.

25 THE COURT: Next, the Constitution

1 guarantees you first the right to have a
2 lawyer to represent you during a trial. The
3 Constitution also guarantees you the right
4 to what's called confront and cross-examine
5 witnesses in a trial. To confront a witness
6 means they sit in a witness chair in your
7 sight, you can look them in the eye as they
8 testify; to cross-examine means Mr. Bergmann
9 will be able to ask questions of each
10 witness. And third, during a trial, you
11 could not be compelled to incriminate
12 yourself, and that can mean the right to
13 simply not testify. You would have a right
14 to have a jury trial, you could sit at
15 counsel table and elect not to testify, and
16 if you did so elect, the government's lawyer
17 could not call you to the stand as a witness
18 against your will.

19 If you had such a trial and wanted to
20 testify, of course you could. You would
21 have the to tell the truth like any other
22 witness, and during that trial, you would
23 have a right to present evidence.

24 If you plead guilty here today, those are
25 rights that you'll give up because there

1 will be no trial, you'll be giving up the
2 right to have a lawyer represent you during
3 a trial. Because there will be no trial,
4 there won't be either confrontation or
5 cross-examination of witnesses. And because
6 there will be no trial -- and because you're
7 going to be entering a plea here today,
8 you'll be giving up the right not to be
9 compelled to incriminate yourself because
10 you'll be telling me in a moment that you're
11 guilty. Do you understand those are rights
12 that you'll give up if you plead guilty here
13 today?

14 MR. KRZECZOWSKI: Yes, Your Honor.

15 THE COURT: Finally, I've already
16 mentioned to you the government's burden is
17 to prove your guilt beyond a reasonable
18 doubt. Next, if you thought you knew
19 witnesses who were favorable to your side of
20 the case and had testimony favorable to your
21 side, you could make them come in and
22 testify, even if they did not want to,
23 because you would have the right to issue
24 subpoenas, which are court orders requiring
25 people to come in and testify. And finally,

1 if you thought the judge made mistakes or
2 errors during the trial, you could raise
3 those errors to the United States Court of
4 Appeals in Cincinnati, Ohio.

5 Now, if you plead guilty, you'll be giving
6 up those rights. The government won't have
7 to prove your guilt beyond a reasonable
8 doubt because you're going to be telling me
9 that you're guilty. There won't be
10 subpoenas issued because there's no trial to
11 which witnesses would come. And, of course,
12 there won't be any errors in a trial because
13 there will be no trial, so those are rights
14 you'll be giving up if you plead guilty here
15 today. Do you understand that?

16 MR. KRZECZOWSKI: Yes, Your Honor.

17 THE COURT: The long and short of it is if
18 you plead guilty here today, there won't be
19 a trial of any kind. Do you understand
20 that?

21 MR. KRZECZOWSKI: Yes.

22 THE COURT: Has anyone forced you or
23 threatened you or made you enter this guilty
24 plea here today?

25 MR. KRZECZOWSKI: No, sir.

1 THE COURT: All right. I'm going to look
2 for a moment at the plea agreement. There
3 is a plea agreement and a plea agreement
4 supplement, which is the typical procedure.
5 The plea agreement is Document 14, the
6 supplement is Document 15. The plea
7 agreement itself is nine pages in length
8 signed by the two of you, Mr. Krzeczowski
9 and Mr. Bergmann, on December the 1st and
10 by -- it looks like Mr. -- I'm not sure who
11 signed it, but it's somebody for Tara Bay.
12 Looks like Mr. Porter, but it may be -- I'm
13 not sure whose signature that is.

14 MR. BROOKS: That looks like Mr. Porter's.

15 THE COURT: All right. That's for Tara
16 Bay and she signed it on the 12th of --
17 December 2nd. That plea agreement has 15
18 paragraphs, and we've already discussed an
19 oral modification of that plea agreement to
20 include this interstate connection --
21 interstate connection with the facts. Let
22 me ask counsel, does that appear to be the
23 plea agreement Mr. Krzeczowski has entered,
24 Mr. Bergmann?

25 MR. BERGMANN: Yes, it does, Your Honor.

1 THE COURT: And you agree that that is the
2 plea agreement as modified?

3 MR. BROOKS: Yes, Your Honor.

4 THE COURT: Mr. Krzeczowski, have you gone
5 over that plea agreement with your lawyer?

6 MR. KRZECZOWSKI: Yes, Your Honor, I have.

7 THE COURT: Is that the plea agreement
8 you've entered into?

9 MR. KRZECZOWSKI: Yes.

10 THE COURT: All right, sir. Now, there
11 are a couple of paragraphs that I'm going to
12 need to go over with you that are typical to
13 go over. One of them is an agreement in
14 Paragraph 7 on Page 5 where the government
15 is agreeing not to oppose a two-level
16 reduction for what's called acceptance of
17 responsibility. They're also agreeing to
18 move for one more point off if your offense
19 level is 16 or greater.

20 I need to explain to you, the district
21 judge does have to decide whether to give
22 you those points off, and there's a process
23 he's going to follow before he makes that
24 decision that I'll explain you to. In a
25 short amount of time after this hearing, you

1 and Mr. Bergmann will meet with the
2 probation office. They're going to prepare
3 what's called a pre-sentence report or a PSR
4 that's going to tell about you and your
5 background and this offense. You're
6 actually going to get a copy of it to
7 review, you and Mr. Bergmann will be able to
8 review a copy of it, the government gets a
9 copy as well. Each side gets that so that
10 if they think there's anything wrong with
11 it, they can file objections. And sometimes
12 there are no objections, other sometimes
13 there are objections that get resolved by
14 agreement. But sometimes there are
15 objections that can't be resolved, and the
16 District Judge has to resolve them at the
17 sentencing hearing.

18 Now, at that point in time, the judge
19 knows more about you and your background and
20 this case, and the judge will then decide
21 whether to give you these points off.
22 Usually the judge does give you these points
23 off, but you need to understand that if for
24 some reason he does not give you those
25 points off, that alone does not give you the

1 right to withdraw your guilty plea. Do you
2 understand that?

3 MR. KRZECZOWSKI: Yes, sir.

4 THE COURT: There are a couple of limited
5 waivers of appeal rights in this document as
6 well. That's in Paragraph 12 of the plea
7 agreement on Pages 7 and 8. You are
8 agreeing that you will not file any direct
9 appeal of the sentence imposed in this case
10 as long as the judge sentences you within
11 the calculated guideline range or below it.
12 Now, you still do have the right to appeal
13 if he should sentence you above the
14 calculated guideline range. Do you
15 understand that provision is in your plea
16 agreement?

17 MR. KRZECZOWSKI: Yes, sir.

18 THE COURT: There's also a limited appeal
19 of what's called collateral attack rights
20 under 28 United States Code, Section 2255.
21 You're agreeing not to later on collaterally
22 attack your conviction, unless it falls
23 within two important exceptions. You still
24 do have the right to raise ineffective
25 assistance of counsel or prosecutorial

1 misconduct if those things were not known to
2 you at the time of the sentencing hearing,
3 but other than that, you're waiving
4 collateral attack. Do you understand that
5 that provision is in your plea agreement?

6 MR. KRZECZOWSKI: Yes, Your Honor.

7 THE COURT: All right. Now, one other
8 thing I need to explain to you about the
9 plea agreement itself. The District Judge
10 actually has to decide whether to accept or
11 reject the plea agreement in its entirety.
12 That would be really unusual to reject a
13 plea agreement, but if the judge did reject
14 your plea agreement in its entirety, you
15 would have a right to withdraw your guilty
16 plea and have a trial. Do you understand
17 that?

18 MR. KRZECZOWSKI: Yes, Your Honor.

19 THE COURT: All right, sir. Aside from
20 what's in this plea agreement, has any agent
21 or officer of the government or anyone else
22 suggested to you that you would get a
23 lighter sentence or some other form of
24 leniency if you would plead guilty?

25 MR. KRZECZOWSKI: No, sir.

1 THE COURT: There's no outside agreements
2 other than this plea agreement, all right,
3 sir. I'm going to have my deputy clerk read
4 Count 1 of the indictment, and then he will
5 ask you for your plea, so if you will
6 listens as he reads.

7 THE CLERK: Count 1, at times material to
8 this indictment, defendant Brian Lee
9 Krzeczowski operated personal computers from
10 his residence located at 252 Cheeks Lane,
11 Dayton, Tennessee with access to the
12 internet through internet service providers.
13 Defendant Brian Lee Krzeczowski downloaded
14 images of children engaged in sexually
15 explicit conduct and shared images of
16 children engaged in sexually explicit
17 conduct via the internet, his file sharing
18 application, and his personal computers.
19 The internet is a means of interstate
20 commerce.

21 The grand jury charges that from in or
22 about November 2010 until in or about May
23 2013 in the Eastern District of Tennessee
24 and elsewhere, the defendant, Brian Lee
25 Krzeczowski, did knowingly employ, use,

1 persuade, induce, entice, and coerce a
2 minor, M.V., a 16-year-old girl, to engage
3 in sexually explicit conduct for the purpose
4 of producing any visual depiction of such
5 conduct, knowing and having reason to know
6 that such visual depiction would be
7 transported using any means and facility of
8 interstate and foreign commerce, and the
9 visual depiction was transported using any
10 means and facility of interstate and foreign
11 commerce in violation of Title 18 United
12 States Code, Section 2251(a). Mr.
13 Krzeczowski, what is your plea to Count 1 of
14 the indictment, guilty or not guilty?

15 MR. KRZECZOWSKI: Guilty.

16 THE COURT: All right. Mr. Krzeczowski,
17 I'm now going to be talking about something
18 called elements of the offense. Elements of
19 the offense are the things the government
20 would have to prove to the satisfaction of a
21 jury beyond a reasonable doubt in order to
22 convict you. The elements of the offense
23 are set out on Page 2 of the plea agreement.
24 I'll ask Mr. Brooks to review those elements
25 with you, and I'm going ask you two

1 questions. I'm going to ask you if you
2 understand those are the things the
3 government would have to prove to the
4 satisfaction of a jury beyond a reasonable
5 doubt to convict you. Then I'm going to ask
6 if you feel like you understand what you're
7 pleading guilty to. Thank you.

8 MR. BROOKS: The first element is that the
9 defendant employed, used, persuaded,
10 induced, enticed, or coerced the victim to
11 take part in sexually explicit conduct for
12 the purpose of producing a visual depiction
13 of such conduct. The second element is that
14 at the time, the victim was a minor. The
15 third element is that the defendant knew or
16 had reason to know that such visual
17 depiction would be mailed or transported
18 across state lines or in foreign commerce or
19 that the visual depiction was mailed or
20 actually transported across state lines or
21 in foreign commerce.

22 THE COURT: Thank you. Mr. Krzeczowski,
23 do you understand that those are the things
24 the government would have to prove to the
25 satisfaction of a jury beyond a reasonable

1 doubt to convict you?

2 MR. KRZECZOWSKI: Yes, I do.

3 THE COURT: Do you feel like you
4 understand what you're pleading guilty to
5 here today?

6 MR. KRZECZOWSKI: Yes, I do.

7 THE COURT: At the beginning of the
8 hearing, Mr. Brooks advised you the range of
9 punishment. I need to advice you that there
10 are certain civil consequences of the judge
11 accepting your guilty plea as well. This is
12 a felony, and when a person is convicted of
13 a felony, they lose certain civil rights.
14 These rights you will lose - the right to
15 vote, the right to serve on a jury, the
16 right to hold public office, the right to
17 possess a firearm, the right to possess
18 ammunition. In addition to that, if you
19 were not an American citizen, it would have
20 an effect on your immigration status, that
21 is subject you to deportation. So those are
22 all the civil consequences that will apply
23 as a result of the judge accepting your
24 guilty plea. Do you understand that?

25 MR. KRZECZOWSKI: Yes.

1 THE COURT: Knowing that, do you still
2 want to plead guilty?

3 MR. KRZECZOWSKI: Yes.

4 THE COURT: Now, I'm going to ask you a
5 series of questions about whether you're on
6 some form of release from some earlier
7 conviction, and these things may not apply
8 to you. First I'm going to ask if you are
9 presently on probation for an earlier
10 conviction. Then I'm going to ask if you're
11 presently on either parole or supervised
12 release from an earlier conviction.

13 First probation. Are you on probation for
14 any earlier conviction?

15 MR. KRZECZOWSKI: No, Your Honor.

16 THE COURT: Are you on parole or
17 supervised release from any earlier
18 conviction?

19 MR. KRZECZOWSKI: No, Your Honor.

20 THE COURT: Those simply do not apply to
21 you then. I will speak briefly about the
22 Federal Sentencing Guidelines. In 1984,
23 Congress passed a Sentencing Reform Act.
24 That act created a sentencing commission,
25 and the sentencing commission has developed

1 a whole series of rules known as the Federal
2 Sentencing Guidelines that advise the
3 district judges of the appropriate range of
4 punishment in all federal criminal cases.
5 Typically, lawyers go over the Federal
6 Sentencing Guidelines with their clients.
7 It's published in a book a little more than
8 an inch thick, and the lawyers go over
9 those. Have you and your lawyer gone over
10 the Federal Sentencing Guidelines and how
11 they might apply in your case?

12 MR. KRZECZOWSKI: Yes, Your Honor.

13 THE COURT: Do you understand if you have
14 prior convictions, those convictions will
15 increase your sentence under the Federal
16 Sentencing Guidelines. Do you understand
17 that?

18 MR. KRZECZOWSKI: Yes, sir.

19 THE COURT: Do you understand the judge is
20 not going to decide your guideline range
21 until after that pre-sentence report is
22 prepared by the probation office, after each
23 side gets a right to object if there's
24 anything wrong and the judge resolves any
25 objections, if there are any, only then will

1 he then calculate your guideline range under
2 the Federal Sentencing Guidelines. Do you
3 understand that's the procedure that he will
4 follow?

5 MR. KRZECZOWSKI: Yes, sir.

6 THE COURT: Do you understand that once
7 the judge does determine the guideline range
8 following that procedure, there are
9 circumstances where he can sentence you
10 either above or below the calculated
11 guideline range. Do you understand that?

12 MR. KRZECZOWSKI: Yes, sir.

13 THE COURT: Do you understand there are
14 circumstances where both you and the
15 government will have a right to appeal the
16 sentence that's imposed. In your case,
17 you've waived appeal rights if the
18 calculated -- if the sentence is within the
19 calculated guidelines or below, but if it's
20 above, you do have a right to appeal and the
21 government has appeal rights. Do you
22 understand those appeal rights exist?

23 MR. KRZECZOWSKI: Yes, sir.

24 THE COURT: Do you understand that under
25 the federal system, parole has been

1 abolished, there is no early release on
2 parole, do you understand that?

3 MR. KRZECZOWSKI: Yes.

4 THE COURT: Do you understand that once
5 you have done any active time the judge
6 requires you to do, you will be released
7 from custody, but be under a term of
8 supervision known as supervised release. Do
9 you understand that will apply to you?

10 MR. KRZECZOWSKI: Yes, Your Honor.

11 THE COURT: All right, sir. Next going to
12 discuss what's called the factual basis of
13 the case. The factual basis is set out in
14 your plea agreement in Paragraph 4 on Pages
15 2 and 3 of the agreement. It has been
16 modified to make clear that acts that
17 occurred that involve interstate commerce,
18 that is things were sent across state lines,
19 but with that modification, I'm going to
20 need to ask Mr. Bergmann. Have you gone
21 over this paragraph with your client, and
22 with that modification, do you understand he
23 is in agreement with the factual basis as
24 modified?

25 MR. BERGMANN: Yes, to both questions,

1 Your Honor. We have gone over this
2 Paragraph 4 on Pages 2 and 3, and I do
3 understand that he is in agreement with the
4 modification.

5 THE COURT: And, Mr. Brooks, with regard
6 to that paragraph as modified, that
7 paragraph does contain all of the essential
8 elements of the offense?

9 MR. KRZECZOWSKI: Yes, Your Honor.

10 THE COURT: All right. Mr. Krzeczowski,
11 have you gone over Paragraph 4 and do you
12 understand the oral modification that's made
13 to make clear that there's interstate
14 connection, interstate commerce involved in
15 this, do you understand that?

16 MR. KRZECZOWSKI: Yes, Your Honor.

17 THE COURT: As it's been modified, do you
18 agree with the government's summary of what
19 you did as set out in Paragraph 4 and as
20 modified today in this hearing?

21 MR. KRZECZOWSKI: Yes, Your Honor.

22 THE COURT: Are you offering to plead
23 guilty here because you are, in fact,
24 guilty?

25 MR. KRZECZOWSKI: Yes, Your Honor.

1 THE COURT: Very well, Mr. Krzeczowski.
2 It's the finding of the Court in the case of
3 United States of America versus Brian Lee
4 Krzeczowski, that Mr. Krzeczowski is fully
5 competent. I conclude that this is an
6 informed and knowing and voluntary plea,
7 that is you understand the Constitutional
8 rights you're giving up and that no one has
9 forced you to do this. It appears to be an
10 agreement that is supported by an
11 independent basis in fact that contains each
12 of the essential elements of the offense
13 and, therefore, I'm going to recommend that
14 this plea be accepted by the district judge.

15 The specific recommendation is that the
16 plea be accepted and that you be adjudged
17 guilty of Count 1 of the indictment. The
18 other counts will be dismissed at sentencing
19 pursuant to the plea agreement. The Court
20 will, of course, defer acceptance or
21 rejection of this plea agreement until the
22 sentencing hearing, that's the standard
23 procedure.

24 Sentencing will be accomplished in
25 accordance with the Sentencing Reform Act of

1 1984, Title 18 United States Code, Section
2 3553 and the Court's local rule. You will
3 remain in custody pending a sentencing
4 hearing in this case. And a sentencing
5 hearing can be conducted on April 6 at 9
6 o'clock. If you check your calendars,
7 counsel, and let me know if there's an
8 alternate date and an alternate time of 2
9 o'clock if that does not work, but April 6
10 at 9, is that satisfactory?

11 MR. BERGMANN: That's satisfactory. Thank
12 you, Your Honor.

13 THE COURT: Government?

14 MR. BROOKS: Yes, Your Honor. Thank you.

15 THE COURT: Then that will be set April
16 6th at 9 a.m. I believe that covers all the
17 things we needed to do this in this case.
18 Anything further?

19 MR. BROOKS: No, Your Honor.

20 THE COURT: Anything further on behalf of
21 Mr. Krzeczowski?

22 MR. BERGMANN: No thank you, Your Honor.

23 THE COURT: Mr. Krzeczowski, do you have
24 any questions, sir?

25 THE WITNESS: No, sir.

1 THE COURT: Very well. This hearing is
2 adjourned.

3 (Whereupon, the hearing was concluded.)
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CERTIFICATE OF REPORTER

I, Jeannie Boleman, Court Reporter, with offices at Chattanooga, Tennessee, do hereby certify:

That I reported on the Stenograph shorthand machine the proceedings held in open court on December 23, 2014, in the matter of USA vs. KRZECZOWSKI, Case No. 1:14-CR-109; that said proceedings in connection with the hearing were reduced to typewritten form by me; and that the foregoing transcript (Pages 1 through 33) is a true and accurate record of said proceedings to the best of my skills and ability.

Further, that I am not kin to any of the parties involved therein nor their counsel, and I have no financial or otherwise interest in the outcome of these proceedings whatsoever.

In Witness Whereof, I have hereunto affixed my official seal and signature this the 9th day of March, 2016.

Ss//Jeannie Boleman
Jeannie Boleman, CSR, RPR, RMR
Notary Public at Large
State of Tennessee

My Commission Expires: April 8, 2018

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